

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.606(b), |) | MB Docket No. 02-388 |
| Table of Allotments, |) | RM-10624 |
| Television Broadcast Stations. |) | |
| (Sterling and Fort Morgan, Colorado) |) | |
| |) | |
| Amendment of Section 73.622(b) |) | |
| Table of Allotments, |) | |
| Digital Television Broadcast Stations. |) | |
| (Sterling and Fort Morgan, Colorado) |) | |

NOTICE OF PROPOSED RULE MAKING

Adopted: December 20, 2002

Released: December 24, 2002

Comment Date: February 14, 2003

Reply Comment Date: March 3, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed on behalf of Channel 20 TV Company, ("Petitioner"), licensee of Station KUPN(TV) ("KUPN"), NTSC Channel 3, and permittee of Digital Channel 23, Sterling, Colorado. Petitioner seeks to amend the Television Table of Allotments, and the Digital Television Table of Allotments, by changing the allotments of NTSC Channel 3 and Digital Channel 23, from Sterling, Colorado to Fort Morgan, Colorado, and modifying Station KUPN's authorizations accordingly.¹

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² In considering a reallocation proposal, the Commission compares the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This

¹ Petitioner's rulemaking proposal to reallocate NTSC Channel 3 to Fort Morgan is short-spaced to a proposal included in a pending rulemaking petition (File No. BPRM-20011009AED) filed by Sierra Grande Broadcasting (Sierra Grande). If Sierra Grande's rulemaking petition is found to be acceptable, it will be processed as a counterproposal in this proceeding.

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

determination is based upon the television allotment priorities set forth in the *Sixth Report and Order on Television Allocations* ("TV Priorities").³ In support of its proposal, Petitioner explains that the requested reallocations from Sterling to Fort Morgan are mutually exclusive with Station KUPN's existing authorization.

3. Petitioner's initial petition for rule making asserted that the adoption of its proposal would result in a preferential arrangement of allotments consistent with the foregoing *TV Priorities* by providing the first local service to a fast growing area and first television service to a substantial number of persons. Noting that Station KUPN is a full-time 100 percent satellite of television Station KTVD, Channel 20, Denver, Petitioner's initial petition stated that if it were permitted to change its community of license, it proposed to serve Fort Morgan as an independently programmed station. Nevertheless, in order to remove the short spacing with NTSC Station KREG-TV, Channel 3, Glenwood Springs, Colorado, contained in its initial petition, Petitioner filed a supplement to its petition for rule making on October 18, 2002, in which it changed the transmitter location and facilities of its proposal to serve Fort Morgan. At this point in time, Petitioner still proposes 100 kilowatts of power, but it has lowered its antenna height from its initial proposal of 2,000 feet to 600 feet in height above average terrain (HAAT). In this light, Petitioner must provide the gains and losses in service it anticipates as a result of its current engineering proposal.

4. Since Petitioner's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KUPN without entertaining competing expressions of interest in the use of NTSC Channel 3 and Digital Channel 23 at Fort Morgan, Colorado, or requiring Petitioner to demonstrate the availability of additional equivalent channels for use by other parties.

5. NTSC Channel 3 and Digital Channel 23 can be allotted to Fort Morgan, Colorado, consistent with the technical requirements of the Commission's Rules, at Petitioner's specified site, utilizing coordinates 39-56-18 NL and 103-52-06 WL, with a site restriction of 35.1 kilometers (21.8 miles) south of Fort Morgan.

6. Accordingly, we seek comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

| <u>City</u> | <u>Channel Nos.</u> | |
|-----------------------|---------------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Fort Morgan, Colorado | ----- | 3 |
| Sterling, Colorado | 3, *18+ | *18+ |

³ 41 FCC 148 (1952). The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities.

We are also soliciting comments on the proposed amendment to the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, with respect to the same communities, as follows:

| <u>Channel Nos.</u> | | |
|-----------------------|----------------|-----------------|
| <u>City</u> | <u>Present</u> | <u>Proposed</u> |
| Fort Morgan, Colorado | ----- | 23 |
| Sterling, Colorado | 23 | ----- |

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 14, 2003, and reply comments on or before March 3, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioner's counsel, as follows:

Edward W. Hummers, Jr., Esq.
Holly Rachel Smith, Esq.
HOLLAND & KNIGHT LLP
2099 Pennsylvania Ave., N.W., Suite 100
Washington, D.C. 20006-6801

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of

1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁴

11. For further information concerning this proceeding, contact R. Barthen Gorman, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁴ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.